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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,410	11/12/2003	Jerry Joe Wolfe JR.	TRIPLE.000010	6794
43640 7590 02/04/2009 DILLON & YUDELL LLP 8911 NORTH CAPITAL OF TEXAS HWY SUITE 2110 AUSTIN, TX 78759				
EXAMINER				
SMITH, KIMBERLY S				
ART UNIT		PAPER NUMBER		
3644				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/706,410

**Applicant(s)**

WOLFE ET AL.

**Examiner**

Kimberly S. Smith

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 15-17, 19, 20, 27, 30, 31, 33-38 and 40-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-53 is/are allowed.
- 6) ☒ Claim(s) 13, 15-17, 19, 20, 27, 30, 31, 33-38 and 40-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/11/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 11/11/08 have been fully considered but they are not persuasive. With respect to the Applicant's arguments with respect to the removable cap. It is noted that the prior office action included a typographic error with respect to the labeling of the removable cap being "26" should have been labeled as "21." It is maintained that irrespective of the typographic error, it is clearly seen in the figure that Wang discloses a removable cap. It is maintained that the head (21) of want is defining a substantially dome shaped outward surface. As is illustrated in Figure 5 of Wang, the head (21) is substantially dome shaped and further generally conforms to the truncated portion of the spheroid outer surface.
2. With respect to the arguments directed to claim 30, these are not found persuasive. It is maintained that the Stop flanges 34, 44 of Wang overlay some of the peripheral base portion of the cap such as 22 as it is the overlaying of the base portion which retains the cap within the opening. Further, the flanges do not overly the peak portion (i.e. the portion adjacent 26) and thereby meets the claimed limitation.
3. With respect to the Jager application not being a valid reference, the argument is not found persuasive. The Jager publication is a continuation in part of application 10/213870 which was filed on 08/06/02. All material relied upon in the publication was disclosed in the child application of Jager (08/06/02) reference US 2003/0079693. As such, the effective filing date for the Jager reference is 08/06/02. As the present application was filed on 11/12/03 which is more than one year after the effective filing date of the Jager reference, it is maintained that the Jager reference is a proper reference under 35 U.S.C. 102(e) and is also therefore a proper

reference under 35 U.S.C. 103. The Examiner has cited US 2003/0079693 in place of the 2004/0244719 per applicant's request for citation of prior art document clearly predating the filing date of the present application. Further it is maintained that Rucker discloses a substantially dome-shaped outward facing surface which conforms to a truncated portion of the spheroid outside surface. The use of the terminology "substantially" is a relative term of degree and as such, Rucker is maintained as being substantially dome shaped.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 48 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what the Applicant is claimed with respect to the dimension. It is unclear as to what "dimension" the applicant is claiming as claim 41 is inclusive of a dimension of the space and a dimension of the aperture.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 13, 16, 27, 30, 31, 34, 36 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang, US Patent 6,073,581.
8. Wang discloses a treat ball comprising a spheroidal outside (Figure 1), an interior compartment (Figure 2) with a first aperture (33, 43) on the outer extent of a space offset from the center location within the treat ball in which a removable dome-shaped outer surface cap (21) is removeably retained and a second aperture (14).
9. Regarding claims 41 and 42, Wang discloses a dimension of the space spaced apart from the aperture (i.e. the area bounded by 34, 44 and 37, 47) being parallel to the plane in which the aperture is located is greater than the maximum dimension of the aperture (34, 44).
10. Regarding claims 40, Wang discloses a wall comprised of two flaps (37, 47) separating the aperture and the interior compartment having an opening (40, 51) for moving treats between the interior compartment and the aperture, wherein the wall includes a funnel section (i.e. the opening functions as a funnel as it constricts the area through which the treats may pass).
11. Regarding claims 30 and 34, Wang discloses a lip (34, 44) at a perimeter of the aperture and the cap being removably retained within the aperture by overlaying at least some of the peripheral base portion but not the peak portion of the cap.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 20 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang, US 6,073,581.

14. Wang discloses the invention substantially as claimed but does not disclose the rigidity of flexibility of the material from which the flap is manufactured. It would have been obvious to one having ordinary skill in the art to use a flexible flap to vary the expected output of treat dispensing, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, USPQ 233 and selecting a known material on the basis of its suitability for the intended use is a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

15. Claims 15 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang as applied to Claim 13 and further in view of McEvoy, IE 82913.

16. Wang discloses the invention with the exception of a sinuous raised feature on the outside surface as taught by McEvoy (16). It would have been obvious to one having ordinary skill in the art to use the sinuous raised feature as taught by McEvoy with the apparatus of Wang so as to provide a more varied and interesting rolling pattern for the ball.

17. Claims 13, 17, 19, 27, 31, 33, 37, 40, 44-47, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jager, US 2003/0079693 in view of Rucker, US Patent 6,634,318.

18. Jager discloses a treat ball comprising a generally spheroid outside surface (Figure 6) having an interior compartment and a first aperture (30) and a second aperture (32). However, Jager does not disclose the use of a removable edible cap. Rucker teaches the use of a substantially dome-shaped edible cap (400) for insertion into an aperture in a treat dispensing apparatus so as to allow for longer enjoyment of the apparatus. It would have been obvious to

one having ordinary skill in the art at the time of the invention to use the cap as taught by Rucker with the apparatus of Jager so as to prolong the time before the animal is able to access the treats thereby increasing the enjoyability of the apparatus.

19. Regarding claim 40, Jager further discloses a wall separating the aperture and the interior compartment (31), the wall having an opening formed therein (at 30, Figure 6b).

20. Regarding claims 17 and 37, Jager discloses the wall includes a funnel section which has a greater thickness away from the opening and a lesser thickness closer to the opening (reference Figure 6).

21. Regarding claims 44, 45 and 50, Jager discloses the ball comprises a resilient unitary member.

22. Regarding claims 46 and 47, Jager as modified discloses the cap blocks the aperture.

#### *Allowable Subject Matter*

23. Claims 51-53 are allowed.

#### *Conclusion*

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is (571)272-6909. The examiner can normally be reached on Monday-Thursday 10:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/  
Primary Examiner, Art Unit 3644  
kss